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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1966

No. 613

STATE OF MISSOURI ex rel. State Highway Commission of Missouri,
Appellee,

vs.

ELWYN LOOMIS CADY and ANNABEL CADY,
Appellants.

ON APPEAL FROM THE KANSAS CITY COURT OF APPEALS OF MISSOURI

JURISDICTIONAL STATEMENT

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ON APPEAL FROM THE KANSAS CITY COURT OF APPEALS OF MISSOURI.

JURISDICTIONAL STATEMENT

Appellants appeal from the final judgment of the Kansas City Court of Appeals of Missouri entered on December 6, 1965, holding the state statutory proceeding for condemnation under eminent domain constitutional. This statement is submitted to demonstrate jurisdiction of this Court and the substantial character of the issues involved.

OPINIONS BELOW

The opinion of final judgment of the Kansas City Court of Appeals is reported at 400 S.W. 2d 481. A previous appeal in the same court resulted in the opinion reported at 372 S.W. 2d 639. The original appeal to the Missouri Supreme Court was dismissed without opinion. Copies of these opinions and order are attached as Appendix A.

JURISDICTION

This is a condemnation case brought by the Highway Department of Missouri under Mo. R.S. 227.120 and Mo. R.S., Chapt. 523 (now Rule 86). Appellants have sought to exhaust remedies in the state courts, the last proceeding being a final judgment affirming the eminent domain proceeding entered on December 6, 1965, by the Kansas City Court of Appeals. Motion for rehearing or in the alternative to transfer to the Supreme Court of Missouri was denied by the Kansas City Court of Appeals on February 7, 1966, and motion to transfer filed in the Supreme Court of Missouri was denied April 11, 1966. Notice of Appeal was filed July 7, 1966, in the Kansas City Court of Appeals and extension of time within which to docket to appeal to October 1, 1966, was ordered by that Court on September 2, 1966. 28 U.S.C., § 1257 (2) is believed to confer jurisdiction. "This Court has long given the jurisdictional statute a practical rather than technical construction." Counsel's brief in *Mercantile Nat. Bank* v. *Langdeau*, 371 U.S. 555, 9 L. Ed. 2d 523, 1164 (paraphrasing *Cohen* v. *Beneficial Loan Corp.*, 337 U.S. 541, 546, quoted in *Construction Laborers* v. *Curry*, 371 U.S. 542, 549). See *Note and Comment*, 73 *Yale L. J.* 515 (1964). The constitutional issues raised herein are at an end with the decision below. They have reached a "definitive stop." Mr. Justice Harlan, citing *Republic Natural Gas Co.* v. *Oklahoma*, 334 U.S. 62, 71, in

Mercantile Nat. Bank v. *Langdeau*, 371 U.S. 555, 574 (dissent). Appellee's petition was originally met by interposition of constitutional objections in appellants' answer and such constitutional points were reiterated at every juncture in the case. Having now gone as far as possible in the Missouri courts, appellants in reliance on *Martin* v. *Creasy*, 360 U.S. 219, bring their prayer to this Court at this time.

CONSTITUTIONAL, STATUTORY AND RULES PROVISIONS INVOLVED

Pertinent portions of the following are set forth in Appendix B:

U. S. Constitution, Art. I, § 10; U. S. Constitution, Art. IV, § 2; U. S. Constitution, Amendment 5; U. S. Constitution, Amendment 14, § 1; Mo. R.S., § 227.120; Mo. R.S., Chapt. 523; Rule 86, Mo. Rules Civ. Proc.

QUESTIONS PRESENTED

1. Whether Missouri eminent domain law violates Art. I, § 10, U. S. Constitution, by permitting issuance of the economic equivalent to a bill of credit instead of money for land taken.

2. Whether Missouri eminent domain law violates the privileges and immunities clauses of Art. IV, § 2 and the 14th Amendment, U. S. Constitution.

3. Whether Missouri eminent domain law is repugnant to the due process and equal protection clauses of the 14th Amendment, U. S. Constitution, in permitting something other than money be offered in an effort to purchase land subsequently taken.

4. Whether Missouri eminent domain law is repugnant to the due process and equal protection clauses of